Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

17 March 2016*

(Air transport — Regulation (EC) No 261/2004 — Article 7 — Compensation payable to passengers in the event that their flight is cancelled or delayed by more than three hours — Article 16 — National bodies responsible for the enforcement of the regulation — Powers — Adoption of enforcement measures against the air carrier for payment of the compensation due to the passenger)

In Joined Cases C-145/15 and C-146/15,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Raad van State (Council of State, Netherlands), made by decision of 11 March 2015, received at the Court on 26 March 2015, in the proceedings

K. Ruijssenaars,

A. Jansen (C-145/15),

and

J. H. Dees-Erf (C-146/15)

v

Staatssecretaris van Infrastructuur en Milieu,

intervening parties:

Royal Air Maroc SA (C-145/15),

Koninklijke Luchtvaart Maatschappij NV (C-146/15),

THE COURT (Eighth Chamber),

composed of D. Šváby (Rapporteur), President of the Chamber, J. Malenovský and M. Safjan, Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

after considering the observations submitted on behalf of:

— K. Ruijssenaars, A. Jansen and J. H. Dees-Erf, by M. Hoorntje, jurist, and F. de Bray, advocaat,

* Language of the case: Dutch.

— the Netherlands Government, by M. Gijzen and K. Bulterman, acting as Agents,

— Koninklijke Luchtvaart Maatschappij NV, by P. Eijsvoogel and P. J. F. Huizing, advocate,

— the German Government, by T. Henze and J. Kemper, acting as Agents,

— the Finnish Government, by J. Heliskoski, acting as Agent,

— the European Commission, by F. Wilman and N. Yerrell, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 January 2016,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Article 16 of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1).

2 The requests have been made in two sets of proceedings between (i) Mr Ruijssenaars and Mr Jansen and (ii) Mrs Dees-Erf, the applicants in the main proceedings, and the Staatssecretaris van Infrastructuur en Milieu (Secretary of State for Infrastructure and the Environment) ('the Secretary of State') concerning the latter's refusal to take enforcement action against Royal Air Maroc SA ('Royal Air Maroc') and Koninklijke Luchtvaart Maatschappij NV ('KLM') respectively, in order to oblige those companies to pay the compensation provided for in Article 7 of Regulation No 261/2004 due to the fact that the flights which they took arrived more than three hours late.

Legal context

EU law

3 Recitals 1, 21 and 22 of Regulation No 261/2004 state as follows:

'(1) Action by the Community in the field of air transport should aim, among other things, at ensuring a high level of protection for passengers. Moreover, full account should be taken of the requirements of consumer protection in general.

…

(21) Member States should lay down rules on sanctions applicable to infringements of the provisions of this Regulation and ensure that these sanctions are applied. The sanctions should be effective, proportionate and dissuasive.

(22) Member States should ensure and supervise general compliance by their air carriers with this Regulation and designate an appropriate body to carry out such enforcement tasks. The supervision should not affect the rights of passengers and air carriers to seek legal redress from courts under procedures of national law.'

4 Article 5(1) of Regulation No 261/2004 provides as follows:

‘1. In case of cancellation of a flight, the passengers concerned shall:

…

(c) have the right to compensation by the operating air carrier in accordance with Article 7, unless:

(i) they are informed of the cancellation at least two weeks before the scheduled time of departure; or

(ii) they are informed of the cancellation between two weeks and seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than two hours before the scheduled time of departure and to reach their final destination less than four hours after the scheduled time of arrival; or

(iii) they are informed of the cancellation less than seven days before the scheduled time of departure and are offered rerouting, allowing them to depart no more than one hour before the scheduled time of departure and to reach their final destination less than two hours after the scheduled time of arrival.

…’

5 Article 7(1) of Regulation No 261/2004, entitled ‘Right to compensation’, provides is follows:

‘1. Where reference is made to this Article, passengers shall receive compensation amounting to:

(a) EUR 250 for all flights of 1 500 kilometres or less;

(b) EUR 400 for all intra-Community flights of more than 1 500 kilometres, and for all other flights between 1 500 and 3 500 kilometres;

(c) EUR 600 for all flights not falling under (a) or (b).

…’

6 Article 16 of Regulation No 261/2004, headed ‘Infringements’, states: as follows

‘1. Each Member State shall designate a body responsible for the enforcement of this Regulation as regards flights from airports situated on its territory and flights from a third country to such airports. Where appropriate, this body shall take the measures necessary to ensure that the rights of passengers are respected. The Member States shall inform the Commission of the body that has been designated in accordance with this paragraph.

2. Without prejudice to Article 12, each passenger may complain to any body designated under paragraph 1, or to any other competent body designated by a Member State, about an alleged infringement of this Regulation at any airport situated on the territory of a Member State or concerning any flight from a third country to an airport situated on that territory.

3. The sanctions laid down by Member States for infringements of this Regulation shall be effective, proportionate and dissuasive.’

Netherlands law

7 Article 16 of Regulation No 261/2004 was implemented by, inter alia, the following provisions of the Wet luchtvaart (Law on Aviation) of 18 June 1992 (Stb.1992, No 368), in the version applicable at the material time ('the Law on Aviation').

8 Under Article 11.15(1)(b)(1) of the Law on Aviation, the Secretary of State, designated as the national body responsible for the enforcement of Regulation No 261/2004, has the authority to impose, by way of order for coercive administrative action, the obligation to comply with the provisions laid down in the regulation or adopted pursuant thereto.

9 According to the Raad van State, referring to the travaux préparatoires for the Law on Aviation, while that law gives the Secretary of State general authority to take enforcement measures in the event of infringement of Regulation No 261/2004, especially where an examination of the files discloses a systematic refusal on the part of the air carrier to comply with its obligations under that regulation, it none the less does not permit the Secretary of State to take enforcement measures at the request of a passenger in each individual case in which an air carrier refuses to allow a claim for compensation based on Articles 5(1)(c) and 7 of Regulation No 261/2004.

The actions in the main proceedings and the questions referred for a preliminary ruling

Case C-145/15

10 Following the cancellation of their flight from Amsterdam (the Netherlands) to Casablanca (Morocco) scheduled for 8 April 2011, Mr Ruijssenaars and Mr Jansen submitted a claim to Royal Air Maroc for the compensation provided in Article 7 of Regulation No 261/2004.

11 When that claim was refused by that air carrier, they requested the Secretary of State, by letter of 4 May 2012, to take enforcement action against Royal Air Maroc with a view to obliging it to remedy the infringement of Article 5(1)(c) of Regulation No 261/2004 and to pay the compensation provided for in Article 7 of the regulation.

12 By decision of 7 May 2012, the Secretary of State rejected the request submitted by Mr Ruijssenaars and Mr Jansen. By decision of 3 October 2012, the Secretary of State rejected the complaint lodged by Mr Ruijssenaars and Mr Jansen against that decision as unfounded.

13 Mr Ruijssenaars and Mr Jansen then brought proceedings challenging that decision before the Rechtbank Oost-Brabant (District Court, Oost-Brabant), which dismissed their action by decision of 28 May 2013.

14 Mr Ruijssenaars and Mr Jansen lodged an appeal against that decision before the Raad van State (Council of State).

15 In those appeal proceedings, the referring court is uncertain whether the Secretary of State has authority to take the enforcement action requested by the applicants. It is of the view that, while it is established that the Secretary of State has authority to take enforcement action against air carriers that refuse systematically to comply with their obligations under Regulation No 261/2004, that may not be the case with regard to enforcement measures adopted at the request of passengers concerning individual situations involving infringement of Articles 5(1)(c) and 7 of the regulation.

16 In that regard, the Raad van State considers that the relationship between an air carrier and a passenger is governed by civil law and that, if the air carrier refuses to pay compensation to the passenger, a claim for compensation must be made by way of a civil action before a civil court. The referring court also states that if the adoption of enforcement measures on an individual basis were entrusted to the Secretary of State, whose decisions are subject to review by the administrative courts, that would be liable to undermine the division of judicial functions in the Netherlands if parallel actions were brought before the civil courts.

17 Moreover, that the Secretary of State does not have competence to adopt the measures at issue in the main proceedings would appear to be confirmed by the parliamentary documents relating to the Law on Aviation, according to which 'there is no role for the authorities to claim compensation from an air carrier on behalf of passengers', and by the fact that the coercive measures provided for by Netherlands law do not, in the event that the air carrier concerned fails to comply with those measures, make provision for compensation for passengers.

18 The Raad van State also states that the provisions of Regulation No 261/2004 at issue in this case are directly applicable and, therefore, may be relied on before the national courts in disputes between individuals, thus ensuring that passengers have effective judicial protection.

19 In those circumstances, the Raad van State decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Given that Netherlands law provides access to the civil courts to protect the rights which passengers may derive under EU law from Article 5(1)(c) and Article 7 of Regulation No 261/2004, does Article 16 of that regulation oblige the national authorities to take implementing measures which form the basis for administrative enforcement action through the bodies designated under Article 16 separately in each individual case in which Article 5(1)(c) and Article 7 of the Regulation are infringed, in order to be able to guarantee a passenger's right to compensation separately in each individual case?'

Case C-146/15

20 As a result of a 26-hour delay of her flight from Curaçao (Netherlands Antilles) to Amsterdam (Netherlands) on 17 December 2009, Mrs Dees-Erf claimed payment from KLM of the compensation provided for in Article 7 of Regulation No 261/2004.

21 As KLM refused Mrs Dees-Erf's claim, she requested the Secretary of State, by letter of 1 February 2012, to take enforcement action against that air carrier with a view to requiring it to remedy the infringement of Article 5(1)(c) of Regulation No 261/2004 and to pay to her the compensation provided for in Article 7 of the regulation.

22 By decision of 2 February 2012, the Secretary of State refused Mrs Dees-Erf's request. By decision of 22 May 2012, the Secretary of State rejected the complaint lodged against that decision as unfounded.

23 Mrs Dees-Erf then brought an action challenging that decision before the Rechtbank Den Haag (District Court, The Hague), which dismissed the action by decision of 13 February 2013.

24 Mrs Dees-Erf lodged an appeal against that decision before the Raad van State.

25 On the same grounds as those set out in the request for a preliminary ruling in Case C-145/15, the Raad van State decided to stay the proceedings and to refer to the Court a question for a preliminary ruling which is identical to that submitted in that case.

26 By order of the President of the Court of 27 March 2015, Cases C-145/15 and C-146/15 were joined for the purposes of the written and oral procedure and the judgment.

Consideration of the question referred

27 By its question, the referring court seeks to ascertain, in essence, whether Article 16 of Regulation No 261/2004 must be interpreted as meaning that, where an individual complaint has been made by a passenger to the body designated by each Member State pursuant to Article 16(1) of the regulation following the refusal by an air carrier to pay to the passenger the compensation provided for in Article 7(1) of the regulation, that body is required to take enforcement action against the carrier with a view to compelling it to pay the compensation.

28 It should be noted in that regard that Article 16(1) of Regulation No 261/2004 provides that Member States are to designate a body responsible for the enforcement of the regulation which, where appropriate, is to take the measures necessary to ensure that the rights of passengers are respected.

29 It is apparent from the wording of Article 16(1) of Regulation No 261/2004, read in conjunction with recital 22 of the regulation, that that provision imposes a duty on the body referred to in those provisions to ensure general compliance with the regulation.

30 As the individual components of Article 16 of Regulation No 261/2004 form a coherent whole, Article 16(2) and Article 16(3) must be read as specifically identifying the various aspects of the task entrusted to the body referred to in Article 16(1).

31 In particular, the 'complaints' which any passenger may make to that body pursuant to Article 16(2) of Regulation No 261/2004 are to be regarded as a form of alert signal intended to contribute to the proper application of the regulation in general, without that body being required to act on such complaints in order to guarantee each individual passenger's right to obtain compensation.

32 Next, the term 'sanction' as used in Article 16(3) of Regulation No 261/2004 — that provision being read in conjunction recital 21 of the regulation — must be interpreted as referring to the measures adopted in response to the infringements which the body identifies in the course of its general monitoring activities provided for in Article 16(1), not to administrative enforcement action to be taken in each individual case.

33 Accordingly, the interpretation of Article 16 of Regulation No 261/2004 adopted above as a whole is not liable to undermine the objectives of Regulation No 261/2004, in particular the objectives referred to in recital 1 of the regulation of providing a high level of protection for passengers and of ensuring that full account is taken of the requirements of consumer protection in general.

34 As observed by the Advocate General at point 39 of his Opinion, that interpretation of Article 16 of Regulation No 261/2004 also makes it possible, as regards the assessment of the same individual situation, to avoid any occurrence of different assessments that are detrimental to the rights of air passengers between, on the one hand, the bodies referred to in Article 16(1) of the regulation dealing with individual complaints referred to them and, on the other, the national courts adjudicating on individual actions seeking compensation under Article 7 of the regulation.

35 Moreover, that interpretation is consistent with the allocation of the roles attributed, respectively, to the bodies referred to in Article 16(1) of Regulation No 261/2004 and to the national courts, as is apparent from the second sentence of recital 22 of the regulation and the Court's case-law (see, to that effect, judgments in *McDonagh*, C-12/11, EU:C:2013:43, paragraph 51, and *Sousa Rodríguez and Others*, C-83/10, EU:C:2011:652, paragraph 44).

36 For that reason, in view of those objectives and the discretion enjoyed by Member States in the allocation of the powers with which they intend to endow the bodies referred to in Article 16(1) of Regulation No 261/2004, as referred to by the Advocate General in point 30 of his Opinion, it is open to Member States, in order to remedy inadequate protection for air passengers, to empower the body referred to in Article 16(1) of the regulation to adopt measures in response to individual complaints.

37 Accordingly, as is apparent from paragraph 18 above, the provisions of Regulation No 261/2004 are directly applicable in the main proceedings and may therefore be relied on before national courts in disputes between individuals, thus ensuring that air passengers enjoy effective judicial protection.

38 It follows from the foregoing that Article 16 of Regulation No 261/2004 must be interpreted as meaning that, where an individual complaint has been made by a passenger to the body designated by each Member State pursuant to Article 16(1) of the regulation following the refusal by an air carrier to pay to the passenger the compensation provided for in Article 7(1) of the regulation, that body is not required to take enforcement action against the carrier with a view to compelling it to pay the compensation.

Costs

39 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Eighth Chamber) hereby rules:

Article 16 of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, must be interpreted as meaning that, where an individual complaint has been made by a passenger to the body designated by each Member State pursuant to Article 16(1) of the regulation following the refusal by an air carrier to pay to the passenger the compensation provided for in Article 7(1) of the regulation, that body is not required to take enforcement action against the carrier with a view to compelling it to pay the compensation.

[Signatures]